



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Regulation of Telecommunications Services

2011 Wisconsin Act 22 makes a number of changes to the way in which providers of telecommunications services are regulated in Wisconsin. The general effect of the Act is to establish more uniform regulation of telecommunications utilities, and to significantly reduce the level of regulation with regard to most topics. This Information Memorandum provides pertinent background information and a summary of the Act.

CLASSES OF TELECOMMUNICATIONS UTILITIES IN WISCONSIN

In general, a person that provides telecommunications services to the public, directly or indirectly, in this state is termed a telecommunications utility. Telecommunications utilities that existed before the 1984 break-up of the Bell System or those resulting from that break-up are termed incumbent local exchange carriers (ILECs).¹ The other two main classes of telecommunications utilities are alternative telecommunications utilities (ATUs) and cell phone service providers. Both ILECs and ATUs provide land line-based services. Cell phone service providers provide wireless-based services.

Prior law established a comprehensive set of regulations for telecommunications utilities subject to traditional (rate-of-return) utility regulation and a number of alternative regulatory schemes that represent lower levels of regulation. These schemes were often characterized by how the rates of a telecommunications utility are regulated, though they typically also entailed reduced regulation of other aspects of the utility's operations. These schemes are briefly described here. The number and type of utilities subject to each scheme and their number of access lines (or phone lines) as of December 31, 2008 is also provided.²

¹ This memorandum uses the common names for the various types of telecommunications utilities in Wisconsin, though not all of these names are defined or used in the statutes.

² This data was obtained from staff at the Public Service Commission (PSC).

INCUMBENT LOCAL EXCHANGE CARRIERS

The default regulatory scheme for ILECs was rate-of-return regulation. A variant of this was available to small telecommunications utilities and three other schemes were available to any ILEC, upon petition by the ILEC. Telecommunications cooperatives were treated separately.

Rate-of-Return Regulated Telecommunications Utilities

Under rate-of-return regulation, the PSC set the allowable returns on capital investments that the utility could earn, as well as the utility's rates [s. 196.20, Stats.]. The PSC also regulated a number of other aspects of the utility's operations, including its depreciation of its assets, cross subsidies, relations with affiliates, service offerings and standards, uniform accounting practices, and approval of mergers.

As of January 1, 2008, there were two ILECs subject to full rate-of-return regulation, CenturyTel of Central Wisconsin and Telephone USA of Wisconsin. At that time, they had a combined total of almost 96,000 access lines.

Small Telecommunications Utility Flexible Rate-of-Return Regulation

Small telecommunications utilities, ILECs providing service as of January 1, 1984 and having fewer than 50,000 access lines, could elect to be subject to flexible regulation and have their rate increases reviewed by the PSC upon their customers petitioning the PSC for the review [ss. 196.213 and 196.215, Stats.].

As of January 1, 2008, there were 44 small telecommunications utilities subject to flexible rate-of-return regulation. At that time, these utilities had a total of over 175,000 access lines.

Alternative Regulation

Alternative regulation was an alternative to traditional rate-of-return regulation intended to give telecommunications utilities incentives through the suspension by the PSC of specific regulations to achieve various goals, such as promoting competition, infrastructure deployment, economic development, consumer choice, and other public goods. [s. 196.195 (12), Stats.] A telecommunications utility could petition the PSC for approval of an alternative regulation plan for the utility.

As of January 1, 2008, there were 26 ILECs subject to alternative regulation with a total of more than 341,000 access lines.

Price Regulation

Price regulation was, essentially, one kind of alternative regulation specified by statute, under which the PSC regulated a telecommunications utility's rates, but not its rate of return. [s. 196.196, Stats.] Separate provisions apply to basic local exchange services, intrastate access service, and other services. In addition, there was a separate procedure for small telecommunications utilities to elect to become price regulated. Under price regulation of basic local exchange services, a telecommunications utility could not raise its rates for service for a period of three years. Following the initial three-year period, the telecommunications utility's rates were based on a formula tied to inflation, except that the PSC could increase the allowable

rates to reward infrastructure investments by the telecommunications utility or decrease the allowable rates if it determines that the telecommunications utility had provided inadequate service or had made inadequate infrastructure investments.

As of January 1, 2008, there were two ILECs subject to price regulation, Frontier North and AT&T (also known as Wisconsin Bell). Frontier North had about 266,000 access lines. AT&T had about 124,000 residential access lines in its 60 smallest exchanges subject to price regulation. The PSC had removed price regulations under procedures in the price regulation statute from all of AT&T's residential access lines in its larger exchanges (including its exchanges in Milwaukee and Madison) and all of its business lines statewide, a combined total of over 850,000 access lines.

Partial Deregulation

A telecommunications utility could petition the PSC for partial deregulation. [s. 196.195 (5), Stats.] If the PSC determined that effective competition existed in the relevant market, based on criteria and following a process in the statutes, it could suspend any of a list of regulations as they apply to the telecommunications utility, including regulation of the securities of telecommunications utilities.

As of January 1, 2008, there were no ILECs operating under partial deregulation.

Telecommunications Cooperatives

In general, the rates of a telecommunications utility operated as a cooperative are not subject to regulation by the PSC, unless the cooperative elects to be subject to that regulation. [s. 196.205, Stats.]

There are 11 telecommunications cooperatives in Wisconsin with a total of nearly 35,000 access lines. None have elected PSC regulation.

ALTERNATIVE TELECOMMUNICATIONS UTILITIES

Alternative telecommunications utilities (ATUs) are a subset of telecommunications utilities, being any of the following:

1. Cable television telecommunications service providers.
2. Pay telephone service providers.
3. Resellers of telecommunications services.
4. Any other telecommunications utility that provides a service that the PSC determines is available from other telecommunications utilities. This category includes, most notably, competitive local exchange carriers (CLECs). CLECs provide local exchange and long distance services and compete within the local exchange service territory of an ILEC.

Under prior law, ATUs were generally exempt from PSC regulation, except that the PSC could impose individual requirements of many of the statutes it administers on individual ATUs.

PSC staff reported that 176 entities were certified as CLECs in Wisconsin at the end of 2009, although only 93 of these reported any business activity as CLECs in that year. These 93 CLECs had a total of just over 800,000 access lines.

CELL PHONE SERVICE PROVIDERS

Under prior law, cell phone service providers (termed “commercial mobile radio service providers”) were exempt from PSC regulation except that they were required to contribute to the Universal Service Fund (USF), collect the police and fire protection fee, and were subject to assessments for enforcement by the Department of Agriculture, Trade and Consumer Protection (DATCP) of regulations related to telecommunications utility trade practices. [s. 196.203, Stats.]

According to the Federal Communications Commission’s (FCC’s) Thirteenth Annual Report to Congress on the State of Competition in the Commercial Mobile Radio Services (“CMRS”) Marketplace, WT Docket No. 08-27, January 16, 2009, at the end of 2007 there were 10 carriers providing mobile wireless services in Wisconsin. At that time, these carriers had almost 3,841,800 subscribers.

The Act does not affect the regulation of cell phone providers.

REGULATORY FRAMEWORK TO PROVIDE COMPETITION IN TELECOMMUNICATIONS SERVICE

Two key events principally shaped the current policies and regulations intended to create competitive telecommunications markets. The landmark federal court action to break up the Bell System in 1984, among other things, opened long-distance service to competition. Twelve years later, the Federal Telecommunications Act of 1996 (the Federal Act) created a regulatory framework for the transition from primarily monopoly-based to market-based provision of telecommunications services by opening markets to competition and removing regulatory barriers to entry.

LOCAL SERVICE

Interconnection and Intercarrier Compensation

The Federal Act preempted all state laws that acted as a barrier to entry into the provision of telecommunications service. In addition, it required the incumbents (ILECs) and new entrants (CLECs) to interconnect their networks with one another, enabling a CLEC to complete calls from its customers to customers on an ILEC’s network. The Federal Act imposed additional requirements on ILECs to prevent them from restricting competitive entry by denying such interconnection or by setting terms, conditions, and rates that could undermine the ability of CLECs to compete.

The Federal Act requires ILECs to negotiate the terms, conditions, and rates of interconnection with CLECs. It authorizes an ILEC to recover the “additional costs of terminating such calls” from a CLEC, referred to as intercarrier compensation. Under prior state law, the PSC has the authority to approve and enforce interconnection agreements. [s. 196.199, Stats.] This section contains procedures for enforcement of agreements and directs the PSC to promulgate rules

“for determining...whether a party’s alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to the agreement to provide telecommunications service to its customers or potential customers.” Act 22 does not affect this provision.

Small Telephone Companies

A small, “rural telephone company,” as defined in the Federal Act, is exempt from the requirements that apply to ILECs until such time as: (1) it receives a bona fide request for interconnection; and (2) the public utilities commission in the state where the rural telephone company is located determines that the interconnection would not be unduly burdensome to the ILEC, is technically feasible, and is consistent with universal service requirements. In addition, a local exchange carrier with fewer than 2% of the access lines in the United States may petition the state utilities commission for a suspension or modification of any of the obligations that apply to local exchange carriers in general or to ILECs in particular. The state commission must grant the petition to the extent and for the duration that it determines the suspension or modification is in the public interest and necessary to avoid imposing: (1) significant adverse economic impacts on users; (2) undue economic burdens on the carrier; or (3) requirements on the carrier that are not technically feasible.

Under prior state law, the PSC could not certify a CLEC to operate in the service territory of an ILEC that has 150,000 or fewer access lines unless one of the following applied:

- The ILEC consented to the certification.
- The ILEC also provided service in areas in which the CLEC already provides service.
- After investigation and a public hearing, the PSC determined that the public interest requires issuance of the certificate. In this case, the ILEC’s obligation to serve as the provider of last resort was eliminated.³

LONG-DISTANCE SERVICE: MARKET ENTRY AND ACCESS CHARGES

The federal court order breaking up the Bell System created seven large ILECs known as the Regional Bell Operating Companies (RBOCs)⁴ or “Baby Bells,” and prohibited them from offering long-distance service in the territories in which they provided local service. The Federal Act freed the RBOCs from this restriction once they made a showing that their local markets have been opened to competition. It also required all ILECs to make available to CLECs, at cost-based wholesale rates, those elements of their network to which CLECs need access in order to offer telecommunications services. The charge that an ILEC applies to a long-distance call it completes for a competitor is called an access charge.

³ The obligation to serve, which ILECs inherited from their predecessor monopoly telecommunications utilities, consists primarily of the duty to provide basic service to all customers in the area the utility serves and to extend service to any unserved property, at a reasonable cost.

⁴ Ameritech was the RBOC that included Wisconsin. The seven original RBOCs no longer exist, as a result of mergers and acquisitions among themselves and other companies.

Long-distance service consists of intrastate and interstate service. Intrastate service, which involves long-distance, or toll calls, between two parties in Wisconsin, is subject to PSC jurisdiction; interstate service is regulated by the FCC. Note that *intrastate* access charges are generally greater than interstate access charges.

TECHNOLOGIES USED TO DELIVER TELECOMMUNICATIONS SERVICES

While telecommunications service was once provided only by traditional “phone companies” over copper wire, it is now provided by several other technologies, as well – coaxial cable (cable television systems), radio waves via land-based towers (cellular telephones), radio waves via satellite, and, the most recent innovation, voiceover Internet protocol (VoIP).

For some time, traditional phone companies have no longer been the leading providers of local voice service, having lost that position to cell phone providers. At the end of 2009, there were 4.3 million cell phone subscriptions in Wisconsin, as reported to the FCC, while the land line (copper wire and coaxial cable) phone companies served 2.7 million access lines, as reported to the PSC. Satellite service accounts for much smaller portions of voice service, though data on the extent of this service is not available.

VoIP is an innovation that can be used in connection with more than one of the existing technologies. It is a manner of formatting information for transmission, rather than a distinct transmission technology. What is more, while VoIP signals can travel from one computer to another over the Internet, much VoIP traffic travels from telephone to telephone or from computer to telephone using the publicly switched telephone network for some part of the transmission. In some cases, such as telephone service offered over cable television networks or services such as AT&T’s U-verse service, the location of the connection can be determined; in other cases, where the connection is made through a computer modem from an IP address, the location of the connection can be anywhere that Internet service is available. Data on the extent of the use of VoIP is not available, although industry representatives indicate that its use is significant and growing. Cable providers in Wisconsin use VoIP exclusively, and other land-line providers and wireless providers are increasingly using it, as well. Some suggest that the industry, as a whole, is in a transition to VoIP.

For a number of historical reasons, services using these various technologies are regulated differently under both state and federal law. The focus of telecommunications regulation has always been on the land line systems. Traditional phone companies and the newer cable providers are regulated as public utilities. Among these providers, ILECs operate under the greatest level of regulation; CLECs, the competitive providers who came later, are regulated less. When wireless service arrived on the scene, the policy choice was made to exempt it from virtually all state regulation, in order to encourage the competition that could result from this new technology. Satellite providers are regulated under federal law, which preempts state regulation of these providers.

The states’ authority to regulate VoIP is subject to FCC determinations, and has not been fully determined. It appears that states *may not* regulate calls that either originate or terminate

over an Internet connection, or both, if the location of either party cannot be determined.⁵ The FCC expressly ***has not made a determination*** of state jurisdiction over calls that either originate or terminate over an Internet connection, or both, and the location of all Internet-connected parties is known. States ***may*** regulate calls that both originate and terminate over the publicly switched telephone network but employ VoIP in the transmission of the call. Note that the FCC currently has an open docket looking at the appropriate regulation of calls transmitted by VoIP. The result of this docket could override state regulation of VoIP.

SUMMARY OF ACT 22

The general effect of the Act is to establish more uniform regulation of telecommunications utilities, and to significantly reduce the level of regulation with regard to most topics, with the notable exception of regulations relating to relations between telecommunications utilities.

DEFINITION OF “TELECOMMUNICATIONS SERVICE”

Prior law defined “telecommunications service” as “the offering for sale of the conveyance of voice, data, or other information.”

The ***Act*** limits this definition to “the conveyance of voice communications ... regardless of technology or mode used ...” removing the conveyance of data or other information from state regulations that apply to telecommunications services. It further amends the definition to include switched access service.

REGULATION OF LAND LINE TELECOMMUNICATIONS SERVICE

Certification of Land Line Telecommunications Utilities

The Act authorizes a land line telecommunications utility to terminate its existing certification and recertify. An ATU may recertify as an ATU, while an ILEC may recertify as either an ILEC or as an ATU. The effect of recertification is to both terminate all requirements under the prior certification and apply to the utility the lower level of regulation established by the Act.

Regulation of Land Line Telecommunications Utilities

The Act repeals the various regulatory schemes available to ILECs under prior law and replaces them with reduced regulations that apply in substantially similar ways to all ILECs and ATUs. It also creates an option for small telecommunications utilities and telecommunications cooperatives to elect a “rate regulation” regulatory scheme.

REGULATION OF INTERCONNECTED VOIP SERVICE

The Act specifies that VoIP service is exempt from all state utility regulations except certain regulations applicable to relations between telecommunications utilities and certain fees that support government functions.

⁵ This does ***not*** refer to calls in which the location of the originating caller would be discernable but has been obscured or disguised. Such calls, sometimes referred to as “phantom traffic,” presumably are subject to the same legal requirements as calls in which the origination is known.

INTERCARRIER RELATIONS

The Act requires land line telecommunications utilities to maintain tariffs on file with the PSC specifying the rates, terms, and conditions of the intrastate access services it offers. It requires that large utilities set their intrastate access rates, after a phase-in period, at a level no higher than their interstate access rates, and requires utilities certified for the first time in Wisconsin after January 1, 2011 to do the same, but without a phase-in period. The Act retains PSC jurisdiction over land line telecommunications utilities for purposes of enforcing the foregoing requirements.

DEFINITION OF “TELECOMMUNICATIONS SERVICE”

Prior law defined “telecommunications service” as “the offering for sale of the conveyance of voice, data, or other information....” In practice, the PSC imposed minimal regulation on data transmission, the principal requirement being the provision of data transmission at a rate of not less than 9,600 kilobits per second as an essential telecommunications service. (See the discussion of universal service, under *Other Provisions*, below.) The **Act** limits the definition of “telecommunications service” to “the conveyance of voice communications ... regardless of the technology or mode used...,” removing the conveyance of data or other information from state regulation that apply to telecommunications service. It further amends the definition to include switched access service (described below, under *Intercarrier Relations*).

REGULATION OF LAND LINE TELECOMMUNICATIONS SERVICE

CERTIFICATION OF LAND LINE TELECOMMUNICATIONS UTILITIES

Certification of ILECs

The Act authorizes an ILEC to terminate its existing certification and recertify either as an ILEC or as an ATU. The PSC must issue an order recertifying an ILEC within 30 days of receiving the ILEC’s notice of recertification. The order may impose on the ILEC only those regulations specified in the Act. The recertification acts to terminate the prior certification and all requirements under that certification that are inconsistent with the regulations allowed under the Act, unless the utility requests the continuation of an individual requirement. The regulations the PSC may impose are described in the following section, *Regulation of Telecommunications Utilities*.

As was described in the background section, small, rural telephone companies enjoy certain protections under both federal and prior state law. In particular, under certain circumstances, they are exempt from the requirements related to an ILEC making its network available to competitors. The **Act** repeals the Wisconsin statute implementing this exemption and specifies that a recertification by a small ILEC, as either an ILEC or an ATU, acts as a limited waiver of the protections under federal law, limited in the sense that the waiver applies only to specified portions of those federal protections.

Under **prior law**, in issuing a certificate of authority to an ILEC, the PSC could include conditions it determines are necessary to protect the public interest. In addition, the PSC could alter or amend a certification. The **Act** repeals these provisions.

Certification of ATUs

The Act authorizes an ATU to terminate its existing certification and recertify, still as an ATU. The PSC must issue an order recertifying an ATU within 30 days of receiving the ATU's notice of recertification. The order must impose on the ATU those regulations that are imposed on all ATUs. The recertification acts to terminate the prior certification and all requirements under that certification that are inconsistent with the regulations allowed under the Act, unless the utility requests the continuation of an individual requirement. The regulations the PSC may impose are described in the following section, *Regulation of Telecommunications Utilities*.

The Act specifies that the only basis on which the PSC may deny an application for certification as an ATU is a finding that the applicant does not have the financial, managerial, or technical capabilities to provide its proposed services or to comply with the regulations the PSC imposes on ATUs.

Under **prior law**, the PSC could not deny a cable television company's application for certification as an ATU if the area the company proposes to serve is already served by a telecommunications utility that has at least 50,000 access lines in this state or that is served by a telecommunications utility that has fewer than 50,000 access lines in this state but also provides cable service (other than satellite service) in the same area. If the PSC approved such an application in an area served by another telecommunications utility with fewer than 50,000 access lines, it was required to also eliminate the incumbent's obligation to serve as the provider of last resort or allocate specified monies from the Universal Service Fund to offset this obligation. The Act repeals these provisions.

Under **prior law**, the PSC could certify an ATU to provide service in a specified portion of the state. The **Act** specifies that the certification of an ATU, other than an ATU that is a municipal government, is on a statewide basis. It further states that any such certification issued before the effective date of this provision is considered amended to be statewide.

REGULATION OF LAND LINE TELECOMMUNICATIONS UTILITIES

The Act repeals the various regulatory schemes available to ILECs under prior law and replaces them with a single set of regulations that apply to all ILECs. In addition, it creates a single set of regulations that apply to all ATUs. It also creates an option for small telecommunications utilities and telecommunications cooperatives to elect rate regulation.

Under the **prior regulatory schemes** available to ILECs, the PSC could, upon petition, waive application to the petitioning telecommunications utility of any of various listed statutes. In contrast, also under prior law, ATUs were exempt from all of ch. 196, Stats. (*Regulation of Public Utilities*) and ch. 201, Stats. (*Securities of Public Service Corporations*), except that the PSC could impose any provision of these chapters on an ATU; in addition, the PSC was not required to apply the same regulations to each ATU.

The **Act** repeals all regulatory schemes available to ILECs and creates a new regulatory scheme for ATUs that recertify as ATUs and ILECs that recertify as ATUs and a second scheme for ILECs that recertify as ILECs. Both schemes exempt telecommunications utilities from all provisions of ch. 196, Stats., except those specified in the recertification provisions. The second scheme represents a slightly lower level of regulation, and is referred to by some as "ATU-light"

regulation. The Act also repeals many statutes relating to telecommunications utilities and amends others that apply to all public utilities to exclude telecommunications utilities.

It is difficult to determine the actual effect of these provisions. The list of statutes repealed or waived is lengthy. However, many of these statutes are currently waived for most ILECs or not applied to most ATUs. Thus, the actual effect of the Act, while significant, is less than may appear. The following describes the effect of the Act on various aspects of the regulation of land line telecommunications service.

Business Operations, Finances, and Facilities

Traditional rate-of-return regulation requires the PSC to have substantial oversight of many aspects of a public utility's operations to ensure that adequate services are provided to the public at reasonable cost. Specific regulations allow the PSC to require submission of financial reports, inspect books, inspect facilities, oversee relations with business affiliates, review and approve or disapprove organizational changes, such as acquisitions, mergers, reorganization, or disillusion, and regulate a utility's securities.

Under ***prior law and practice***, most of these regulations were no longer applied to telecommunications utilities. The ***Act*** either repeals or makes inapplicable to telecommunications utilities the great bulk of these regulations.

One provision in this category that the PSC staff identify as a significant change is the repeal of the requirement that telecommunications utilities file annual reports with the PSC. While this change deprives the PSC of information regarding the telecommunications industry, it also relieves the utilities of the expense of preparing reports that, arguably, are no longer needed for regulatory purposes.

Tariffs

Tariffs are published schedules of the rates, terms, and conditions of services offered by a public utility. Under traditional regulation, public utilities are required to file tariffs with the PSC and, once filed, adhere to them.

Under ***prior law and practice***, ILECs were required to file tariffs with the PSC; ATUs were not required to file formal tariffs, but many nonetheless publish schedules of the rates, terms, and conditions of their services.

The ***Act*** replaces existing tariff provisions with two separate provisions, ***mandatory*** tariffing for intrastate switched access and ***optional*** tariffing for other services. Note that the Act applies these provisions to "any telecommunications utility or alternative telecommunications utility." Under the definitions in ch. 196, Stats., "alternative telecommunications utility" is a subset of "telecommunications utility," and so it is unclear what "any telecommunications utility or alternative telecommunications utility" refers to. It would appear, however, that the intent of this language is to apply the tariffing provisions to any ILEC or ATU; this memorandum assumes this to be the case.

Tariffs for intrastate switched access are described below under the heading *Intercarrier Relations*. With regard to ***other services***, the Act authorizes an ILEC or ATU to retain an existing tariff, file a new tariff with the PSC, or withdraw or change a tariff on file with the PSC.

The tariff must include all rates, tolls, and charges and all terms and conditions that apply to the services specified in the tariff, but the utility is not required to file tariffs for all services it offers. A utility must make any tariff it files with the PSC available to the public and it must adhere to the tariff, except that it may contract with individual customers to provide services under rates and conditions other than those specified in the tariff. A change in a tariff takes effect as specified in the revised tariff; the same is true of a new tariff, unless the PSC acts to review or revise the tariff.

The PSC may review and revise new tariffs only as required to ensure that the tariff complies with the new statute regarding intrastate switched access and the existing statute regarding interconnection agreements, both of which are described below under *Inter-carrier Relations*, and the previously existing statute relating to telecommunications utility practices in relation to their customers, described below under *Consumer Protection*, and only to the extent those statute apply to the utility. The review process starts with suspension of the new tariff, which the PSC may do by serving a written notice on the utility within 10 days of the utility filing the tariff. The PSC must hold a hearing before it may modify the tariff; if it has not done so within 60 days of issuing the notice of suspension, it must issue an order approving the tariff. If the PSC holds a hearing, it must issue a final order within 120 days of issuing the notice of suspension; if the PSC fails to issue a final order within this time frame, the new tariff becomes effective as filed.

Consumer Protection: Service and Rates; Enforcement; Complaints

Viewed broadly, consumer protection includes all of the following:

- Statutory requirements that public utilities provide reasonable and adequate service at fair prices. These include prohibitions on discriminatory pricing or pricing that treats individual customers differently than others.
- Specific requirements regarding practices in relation to their customers. These include a list of prohibited practices, including practices affecting retail customers and practices relating to the provision of access or interconnection to competing telecommunications utilities.
- Mechanisms to enforce these requirements. These include the authority of the PSC to investigate customer complaints or to investigate suspected violations on its own motion and to order changes in response to the findings of such investigations.

Under ***prior law and practice***, these consumer protections applied only to ILECs, except that separate statutes allowed utilities to enter into contracts with individual customers that differ from the filed tariff, if the contract meets certain conditions. The **Act** either repeals or makes inapplicable to all telecommunications utilities the majority of these regulations.

The Act repeals the statutes requiring telecommunications utilities specifically to provide adequate service at fair prices, including the prior law prohibitions on discrimination, and modifies similar statutes that apply to all public utilities rendering them inapplicable to telecommunications utilities.

In general, the Act retains the specific requirements regarding practices in relation to their retail customers. It makes certain changes to the provisions regarding practices relating to the

provision of access or interconnection to competing telecommunications utilities, which are described below under Intercarrier Relations.

The Act repeals the PSC's authority to investigate consumer complaints regarding telecommunications utilities or to investigate the adequacy of telecommunications service or fairness of rates, except that it retains the PSC's authority to investigate the complaint of one utility that another utility has violated the terms of an interconnection agreement.

Note that DATCP administers and enforces separate consumer protection standards that relate only to the marketing of telecommunications services. The Act does not affect these statutes.

Provider of Last Resort; Obligation to Serve

Following the breakup of the Bell System, and as competition was introduced to telephone service, the incumbent providers had the obligation to serve as the provider of last resort for local customers. This obligation consisted primarily of the duty to provide basic service to all customers in the area the utility serves and to extend service to any unserved property, at reasonable cost. It was not expressly stated in the statutes, but arose from the combined effect of several statutes, including the requirement that an ILEC file with the PSC a map of the area where it provides service. Under prior law, the PSC was authorized to waive the obligation to serve for a small ILEC that it orders to open its territory to competition, but PSC staff report that it generally has not done so. As a result, prior to enactment of Act 22, most, if not all, ILECs were under the obligation to serve as providers of last resort.

The **Act** eliminates or makes inapplicable the mechanisms of prior law that established the obligation to serve. In their place, the Act creates an explicit but short-term obligation, subject to waivers and exceptions under specified circumstances.

The Act requires an ILEC to make basic voice service available to all residential customers within the territory where it operates as an ILEC.⁶ It defines "basic voice service" as the provision to residential customers of two-way voice communications within a local calling area, including extended community calling and extended area service. "Basic voice service" does not include Internet service or other discretionary or optional services. An ILEC may satisfy this obligation through an affiliate and by any available technology or mode.

The PSC must grant a waiver to the obligation to serve, upon application by an ILEC, if it finds that the waiver is in the public interest or that effective competition for basic voice service exists in the local exchange. If the PSC has not acted on an application for a waiver within 120 days of receiving it, the waiver is considered to be granted.

In addition, the PSC must grant a waiver, upon application, if it has previously made a finding that effective competition for basic voice service exists in the local exchange. The PSC is required to grant the waiver as soon as it verifies that it has previously made that finding. If the PSC has not acted on an application for a waiver within 20 days of receiving it, the waiver is considered to be granted.

⁶ A telecommunications utility can function as an ILEC in certain areas, but also as a CLEC in the area served by another ILEC.

The Act also provides that, if the PSC has previously granted a waiver to an ILEC's obligation to serve, that waiver remains in effect.

The limited obligation to serve created by the Act does not apply after April 30, 2013.

Election of Rate Regulation by Small Telecommunications Utilities and Telecommunications Cooperatives

Under **prior law**, a telecommunications cooperative could elect to be subject to the following regulations:

- The requirements that rates, tolls, and charges be reasonable, and the PSC's authority to enforce those requirements, including the authority to investigate suspected violations. [ss. 196.28 and 196.37, Stats.]
- PSC authority to classify a utility's services. [s. 196.02 (2), Stats.]
- The requirement that a utility report to the PSC its depreciation rates for classes of fixed capital. [s. 196.09 (1), Stats.]
- PSC authority to supervise and regulate profit-sharing arrangements between a utility and its consumers or employees and sliding scales of charges for service. [s. 196.11, Stats.]
- PSC oversight of changes in rates. [s. 196.20, Stats.]
- PSC authority to investigate consumer complaints. [s. 196.26, Stats.]

Under the **Act**, a small telecommunications utility (a telecommunications utility providing local access service to fewer than 50,000 lines) or a telecommunications cooperative may elect to be subject to the first and fourth items listed above. [ss. 196.11 (2), 196.28, and 196.37, Stats.]

Under **prior law**, a telecommunications cooperative was subject to PSC authority to investigate consumer complaints if the complaint related to compliance with the terms of an interconnection agreement. (Interconnection agreements are described in the background section of this Information Memorandum.) The **Act** repeals this provision.

REGULATION OF INTERCONNECTED VOIP SERVICE

The Act incorporates the FCC's definition of "interconnected VoIP service" by reference. That definition is as follows:

Interconnected VoIP service. An interconnected Voice over Internet protocol (VoIP) service is a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user's location;

(3) Requires Internet protocol-compatible customer premises equipment (CPE); and

(4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

[47 C.F.R. s. 9.3.]

As described in the background section of this Information Memorandum, the essential feature of this service is that it allows a user to make and receive calls to and from traditional phone numbers using an Internet connection.

The Act establishes that interconnected VoIP service is generally exempt from all PSC regulation, with two exceptions described below. This is particularly significant in light of the observation that the telecommunications industry appears to be making a transition to the use of VoIP as a standard format for the transmission of voice messages. Note, though, that the full extent of this exemption from regulation depends on future orders of the FCC. If the FCC determines that states do not have jurisdiction over interconnected VoIP calls, the exemption will have no practical effect. Until such time, or if the FCC determines otherwise, the exemption means that Wisconsin does not assert that jurisdiction.

Interconnection and Access Charges

The Act specifies that interconnected VoIP service is subject to the prior law provisions related to interconnection agreements, as described in the background section.

The Act requires that, unless otherwise provided by federal law, an entity that provides interconnected VoIP service pay intrastate switched access rates (or charges) related to that service to the same extent that any telecommunications provider is obligated to pay intrastate switched access charges. (See the discussion of switched access charges, below.)

The Act also specifies that, unless otherwise provided by federal law, an entity that provides intrastate switched access service in connection with interconnected VoIP services is subject to the new provisions created by the Act relating to telecommunications tariffs, and may **charge** switched access charges in connection with the switched access services it provides. (See the discussion of telecommunications tariffs, above.)

Fees

The Act specifies that interconnected VoIP service is subject to fees to fund the following funds or functions:

- The Police and Fire Protection Fund. [s. 196.025 (6), Stats.]
- The Universal Service Fund. [s. 196.218 (3), Stats.]
- The telephone relay service. [s. 196.858, Stats.]

- Enforcement by DATCP of regulations related to telecommunications utility trade practices. [s. 196.859, Stats.]

The Act specifies that the amount of an interconnected VoIP service provider's contribution to the Universal Service Fund must be based on one of the following:

- The provider's actual intrastate revenues.
- A study, approved by the PSC or the FCC, of the provider's call traffic.
- The inverse of the FCC's allocation of its revenues for purposes of its contribution to the federal Universal Service Fund.

INTERCARRIER RELATIONS

SWITCHED ACCESS RATES

The Act defines "switched access service" as providing access to a local exchange network for the purpose of originating or terminating phone calls in that exchange. "Intrastate switched access" is the switched access provided for calls that both originate and terminate in the same state, while "interstate switched access" is that provided for calls that cross state lines. "Switched access rates" are the charges for that service; intrastate switched access rates are under state jurisdiction, while interstate switched access rates are under the jurisdiction of the FCC. As was noted in the background section, intrastate switched access rates are generally higher than their interstate counterparts.

The Act requires that three categories of land line telecommunications utilities reduce their intrastate switched access rates to mirror their interstate rates. The requirement is phased in, with different treatment given to different categories of telecommunications utilities:

- A "new nonincumbent," defined as a telecommunications provider that is neither an ILEC nor an ILEC recertified as an ATU under the provisions of the Act, and was initially certified by the PSC after January 1, 2011: essentially, no phase in.
- A "large nonincumbent," defined as a telecommunications provider that is not an ILEC, that had at least 10,000 access lines in this state as of January 1, 2010, and was initially certified by the PSC prior to January 1, 2011: a six-year phase in, consisting of a three-year freeze in rates and three years of declining rates.
- A "large ILEC," defined as an ILEC that, with its affiliates, had a total of at least 150,000 access lines in this state as of January 1, 2010: a six-year phase-in, consisting of a two-year freeze in rates and four years of declining rates.

The PSC may not investigate, review, or set the intrastate switched access rates of a new nonincumbents, large nonincumbents, or large ILECs except to enforce the tariffing requirements described below.

The Act does not establish any requirements regarding the intrastate switched access rates of small nonincumbents or small ILECs. It specifies that, during the three-year period beginning

on the effective date of the legislation for small nonincumbents and during the four-year period beginning on the effective date for small ILECs, the PSC may not investigate, review, or set the intrastate switched access rates except to enforce the tariffing requirements.

TARIFFS

The Act requires an ILEC or ATU to have on file with the PSC at all times a tariff showing its rates, tolls, and charges for intrastate switched access service. Once an ILEC or ATU has such a tariff on file, it may not withdraw the tariff and may not change the rates, tolls, or charges shown in the tariff except as required to reduce intrastate switched access rates to the level of interstate rates. A new tariff may set intrastate access rates higher than they were on January 1, 2011, only if doing so does not violate the requirements regarding such rates described above and the tariff is consistent with a statutory set of public interest factors in current law established for determining whether telecommunications service is adequate and charges are fair.

ADEQUATE AND REASONABLE SERVICE AND RATES

The Act retains the applicability to switched access service and wholesale telecommunications services of the requirements that service be adequate and reasonable and that rates be just and fair and retains the PSC's authority to enforce these requirements. It also authorizes the PSC to enforce payment of access charges specified in tariffs.

INDIVIDUAL CONTRACTS

Under **prior law**, telecommunications utilities were required to provide switched access service under tariff under the same rates, terms, and conditions to all entities purchasing that service. The **Act** authorizes a telecommunications utility to contract with individual customers to provide services under rates and conditions other than those specified in a tariff.

OTHER PROVISIONS

RELATIONSHIP TO THE FEDERAL TELECOMMUNICATIONS ACT

The Act specifies that nothing in ch. 196, Stats., "is intended to either reduce or expand the scope and application of the federal Telecommunications Act, ..., including the jurisdiction and authority granted to the [PSC] thereunder, and the [PSC] may take any action the [PSC] is authorized to take under that federal act."

REGULATION OF THE SECURITIES OF PUBLIC SERVICE CORPORATIONS

Under **prior law**, ch. 201, Stats., regulated the securities of public service corporations. The chapter includes only one provision that applies to telecommunications utilities, and that provision did not apply to any telecommunications utilities, as regulated by the PSC at the time Act 22 was enacted. The **Act** repeals this provision.

UNIVERSAL SERVICE: ESSENTIAL TELECOMMUNICATIONS SERVICES AND ADVANCED SERVICE CAPABILITIES

State and federal universal service programs provide funding to telecommunications providers to help ensure the deployment and availability of essential telecommunications service and, under the state program, of advanced service capabilities. The programs are funded through fees assessed on telecommunications providers. For the federal program, the FCC has identified essential telecommunications services in its regulations while, for the state program, the PSC has identified essential services and advanced service capabilities, by rule. Telecommunications providers eligible for funding under the federal program are termed “eligible telecommunications carriers” or ETCs; federally designated ETCs are eligible for state funding, as well.

Under **prior state law**, telecommunications utilities were required to make essential services available to all customers at affordable prices, and to make advanced service capabilities available to all areas of the state at reasonable prices within a reasonable period of time.

The **Act** defines essential services as those identified in FCC regulations, rather than those specified by the PSC in rules. It specifies that only ETCs are required to make essential services available to their customers; the revised text does not make reference to the services being made available at reasonable cost. A telecommunications provider may satisfy this requirement by providing the service itself or through an affiliate and through the use of any technology or mode.

The Act specifies that, if a cell phone provider has or seeks designation as an ETC solely for purposes of federal universal service funding, it is not subject to the state requirement to provide essential services.

It also repeals the requirement that telecommunications utilities make advanced service capabilities available and removes funding for these purposes from the state program.

VIDEO SERVICE PROVIDERS; USE OF TRANSMISSION PROPERTY AND EQUIPMENT

In general, any person that owns transmission equipment and property must, for reasonable compensation, allow a public utility to use that equipment and property, if that use will not harm the owner. If agreement on reasonable compensation cannot be reached, any party may apply to the PSC, which may investigate and prescribe reasonable conditions and compensation for use of the property and equipment. **Prior law** defined “transmission equipment and property” to include equipment and property on, over or under any street or highway.

The **Act** adds video service providers to the entities that must be allowed to use transmission property and equipment and amends the definition of “transmission equipment and property” as “any conduit, subway, pole, tower, transmission wire or other equipment on, over or under **any right-of-way owned or controlled by a political subdivision of the state**, as well as any street or highway.”

LOCAL GOVERNMENT TELECOMMUNICATIONS UTILITIES; PRICING OF SERVICES

Under **prior law**, telecommunications utilities were prohibited from using revenues from telecommunications activities to subsidize other activities of the telecommunications utility or its affiliates. It applied a specific standard for the pricing of services to municipal telecommunications utilities, termed total service long-run incremental cost (TSLRIC), to ensure that the services are priced at their cost to the municipal utility.

As part the elimination of statutes related to rate-of-return regulation, the **Act** repeals the cross-subsidization statute, but retains the provisions specific to municipal telecommunications utilities.

LATA BOUNDARIES

Local access transport area (LATA) is a concept that dates to the breakup of the Bell System. Originally, they were areas between which the “Baby Bells” were not allowed to provide long-distance service. With deregulation and growing competition in long-distance service, LATAs are less significant than they once were, but affect charges for certain types of calls. Under state law, 150 customers who are residents of the same local exchange area for telecommunications service may request the PSC to petition the federal district court to include their local exchange area in a different local access and transport area.

The Act creates a definition of “customer” for this provision. In essence, a customer is a person who is billed for one or more local telecommunications access lines; a person who is billed for more than one access line is counted as a single customer and the total number of customers may not to exceed one person per access line.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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